

225.7501 Policy.

Acquire only domestic end products for use outside the United States, and use only domestic construction material for construction to be performed outside the United States, including end products and construction material for foreign military sales, unless—

(a) Before issuing the solicitation—

(1) The estimated cost of the acquisition or the value of a particular construction material is at or below the simplified acquisition threshold;

(2) The end product or particular construction material is—

(i) Listed in FAR 25.104 or 225.104(a)(iii);

(ii) A petroleum product;

(iii) A spare part for foreign-manufactured vehicles, equipment, machinery, or systems, provided the acquisition is restricted to the original manufacturer or its supplier in accordance with DoD standardization policy (see DoD Directive 4120.3, Defense Standardization and Specification Program);

(iv) An industrial gas; or

(v) A brand drug specified by the Defense Medical Materiel Board;

(3) The acquisition is covered by the World Trade Organization Government Procurement Agreement;

(4) The acquisition of foreign end products or construction material is required by a treaty or executive agreement between governments;

(5) The end product is acquired for commissary resale; or

(6) The contracting officer determines that a requirement can best be filled by a foreign end product or construction material, including determinations that—

(i) A subsistence product is perishable and delivery from the United States would significantly impair the quality at the point of consumption;

(ii) An end product or construction material, by its nature or as a practical matter, can best be acquired in the geographic area concerned, e.g., ice or books; or bulk material, such as sand, gravel, or other soil material, stone, concrete masonry units, or fired brick;

(iii) A particular domestic construction material is not available;

(iv) The cost of domestic construction material would exceed the cost of

foreign construction material by more than 50 percent, calculated on the basis of—

(A) A particular construction material; or

(B) The comparative cost of application of the Balance of Payments Program to the total acquisition; or

(v) Use of a particular domestic construction material is impracticable;

(b) After receipt of offers—

(1) The evaluated low offer (*see* Subpart 225.5) is an offer of an end product that—

(i) Is a qualifying country end product;

(ii) Is an eligible product; or

(iii) Is a nonqualifying country end product, but application of the Balance of Payments Program evaluation factor would not result in award on a domestic offer; or

(2) The construction material is an eligible product; or

(c) At any time during the acquisition process, the head of the agency determines that it is not in the public interest to apply the restrictions of the Balance of Payments Program to the end product or construction material.

[67 FR 20694, Apr. 26, 2002, as amended at 67 FR 77939, Dec. 20, 2002; 69 FR 1928, Jan. 13, 2004; 70 FR 2363, Jan. 13, 2005]

225.7502 Procedures.

(a) *Solicitation of offers.* Identify, in the solicitation, supplies and construction material known in advance to be exempt from the Balance of Payments Program.

(b) *Evaluation of offers.* (1) *Supplies.* Unless the entire acquisition is exempt from the Balance of Payments Program, evaluate offers for supplies that are subject to the Balance of Payments Program using the evaluation procedures in subpart 225.5. However, treatment of duty may differ when delivery is overseas.

(i) Duty may not be applicable to nonqualifying country offers.

(ii) The U.S. Government cannot guarantee the exemption of duty for components or end products imported into foreign countries.

(iii) Foreign governments may impose duties. Evaluate offers including such duties as offered.

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(2) *Construction*. Because the contracting officer evaluates the estimated cost of foreign and domestic construction material in accordance with 225.7501(a)(5)(iv) before issuing the solicitation, no special procedures are required for evaluation of construction offers.

(c) *Postaward*. For construction contracts, the procedures at FAR 25.206, for noncompliance under the Buy American Act, also apply to noncompliance under the Balance of Payments Program.

225.7503 Contract clauses.

Unless the entire acquisition is exempt from the Balance of Payments Program—

(a) Use the clause at 252.225-7044, Balance of Payments Program—Construction Material, in solicitations and contracts for construction to be performed outside the United States with a value greater than the simplified acquisition threshold but less than \$6,725,000.

(b) Use the clause at 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of \$6,725,000 or more. For acquisitions with a value of \$6,725,000 or more, but less than \$7,611,532, use the clause with its Alternate I.

[67 FR 20694, Apr. 26, 2002, as amended at 67 FR 49256, July 30, 2002; 69 FR 1928, Jan. 13, 2004]

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AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36388, July 31, 1991, unless otherwise noted.

Subpart 226.1—Indian Incentive Program

226.103 Procedures.

(f) The contracting officer shall—

(i) Submit a request for funding of the Indian incentive to the Office of Small and Disadvantaged Business Utilization, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics) (OUSD(AT&L)SADBU), 1777 North Kent Street, Suite 9100, Arlington, VA 22209; and

(ii) Upon receipt of funding from OUSD(AT&L)SADBU, issue a contract modification to add the Indian incentive funding for payment of the contractor's request for adjustment as described in the clause at 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

[68 FR 56562, Oct. 1, 2003]

226.104 Contract clause.

Use the clause at 252.226-7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, in solicitations and contracts for supplies or services exceeding \$500,000 in value.

[68 FR 56562, Oct. 1, 2003, as amended at 69 FR 55991, Sept. 17, 2004]